

C J Wijayawardhana v Sri Lanka Telecom PLC

RTIC Appeal (In-Person Hearing)/1283/2019- Order adopted as part of the formal meeting of the Commission on 03.09.2019.

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Mr. S.G. Punchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: C J Wijayawardhana
Notice issued to: Designated Officer, Sri Lanka Telecom PLC

Appearance/ Represented by:

Appellant - C J Wijayawardhana
PA - Rajeev Amarasuriya, Attorney-at-Law (for PA)
Anne Devananda, Attorney-at-Law (for PA)
Pujanee Galappaththi, Attorney-at-Law (for PA)
D C Panapitiya, Manager (Regulatory Matters), Sri Lanka Telecom PLC

RTI Request filed on	30.11.2018
IO responded on	06.12.2018
First Appeal to DO filed on	20.12.2018
DO responded on	08.01.2019
Appeal to RTIC filed on	26.02.2019

Brief Factual Background:

The Appellant by information request dated 30.11.2018 required the following information.

Details of the total cost incurred by Sri Lanka Telecom PLC in relation to appeal numbers 295/2018, 298/2018, 299/2018, 319/2018, and 402/2018 in the RTI Commission, giving a breakdown as given below

I. Legal consultation fees.

II. Legal fees for written submissions.

III. Legal fees for representations by counsels in the RTI Commission.

IV. Any other related legal cost.

The IO on 06.12.2018 responded rejecting the information request as it is in relation to exempted information covered by Section 5 (1) (f). Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 20.12.2018. The DO responded on 08.01.2019 reaffirming the rejection made by the IO. Dissatisfied with the response of the DO the Appellant preferred an appeal to the Commission on 26.02.2019.

Matters Arising During the Course of the Hearing:

The written submission of the PA was submitted to the Commission on record. The PA drew the attention of the Commission to the typographical error in relation to the date of the written submission which should have been “On this 2nd September 2019” instead of “On this 2nd September 2018”.

The PA had raised several objections as expressed in its written submission. The PA in its objections laid out that,

- A. *Proceedings before the Honourable Commission on 13.11.2018 in the relevant appeals, i.e. Appeal nos. 295/2018, 298/2018, 299/2018, 319/2018 and 402/2018 specifically and expressly reflect the bona fide understanding between the Appellant and the Respondent that the said appeals were concluded with Respondent handing over information relating to item 2 therein, i.e. the reason for nor granting the Appellant an extension of employment in the initial instance, on the basis and understanding that the Appellant would not, hence-forth file further repetitive information requests, and the instant request contravenes this understanding and has been filed in bad faith.*
- B. *The Appellant is guilty of serious abuse of the process and this appeal should therefore be refused.*

6. *It is submitted with respect that as referred to above the Appellant, has now made multiple requests under the Right to Information Act ...*

i. And now, by Application dated 30.11.2018 has requested details of Legal Costs pertaining to RTI Commission Appeal Nos. 295/2018, 298/2018, 299/2018, 319/2018 and 402/2018.

7. *It is submitted with respect that it is very clear from the foregoing submissions of multiple requests for information under the Right to Information Act, that the Applicant, who is now retired from the services from the Respondent, has sought to misuse the rights available under the Act, to harass the Respondent.*

The PA reiterated that the Appellant is engaged in an abuse of the process as there was an understanding in the previous appeals that the Appellant would not, thereafter file future repetitive information requests which has also been upheld in the Orders of the Commission. The bad faith on the part of the Appellant was highlighted by the PA as he had continued to file information requests of similar nature against the PA and abusing the process laid out by the Right to Information Act. In support of his argument, counsel for the PA referred to the Indian cases of *ICAI v. Shaunak H. Satya* (2011) 8 SCC 781; *Deshmukh Suresh Bhagwanrao v. C.B.E.C. Department of Revenue, New Delhi* (31.05.2007, CIC Digest (Vol. 11) 1516 (280); *Uma Kanti & Ramesh Chandra v. Navodya Vidyalaya Samiti* (5.1.2008, CIC Digest (Vol. II) 1977 (943)); *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Anr.*; *Jagdish Kumar Koli vs. Department of School Education & Literacy* (CIC/SA/A/2015/001849) where it was held that RTI Act has to be appropriately dealt with, and where abuse of the RTI Act is present it must be checked in accordance with law.

Considering the substantive request, the PA while acknowledging the judgment by the Commission in *Ceylon Bank Employees Union v People's Bank* (RTIC Appeal 58/2018 RTIC Minutes of 22.05.2018) distinguished the present matter with the said previous appeal on the following grounds in addition to those asserted in the PA's written submission.

1. The information request in the aforequoted appeal arose from a Trade Union rather than an individual person.
2. The allegation made by the Appellant on *Ceylon Bank Employees Union v People's Bank* (RTIC Appeals 58/2018 RTIC Minutes of 22.05.2018), that the court procedure was frivolous and instituted to victimize the Trade Union. Therefore the public interest was clearly established.

The principal exemption relied on by the PA was Section 5(1)(a) on the basis that the provision of information would cause unwarranted invasion of the privacy of the individuals whose legal consultation fees, fees for written submissions, fees for representations by counsel in the RTI Commission and any other fees are in question. The PA further emphasised that if the Appellant is of the contrary belief, the Appellant must prove that the larger public interest justifies the disclosure of such information. The PA

further highlighted that merely because the Information Request is made against a public institution, it does not necessarily amount to an overriding public interest and pointed out that the Appellant had not raised any issue of public interest in the Appellant's written submission and has thus *ex facie* failed to satisfy the existence of public interest which would compel the PA to disclose the information requested under this appeal.

Section 5(1)(a) is as follows:

the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure

Moreover, the PA brought to the notice of the Commission that although 'Sri Lanka Telecom PLC' falls under the threshold of Public Authority under Section 43 of the RTI Act, 51% of its shares are owned by private entities as it is a company listed under the Colombo Stock Exchange. Thus, the funds of 'Sri Lanka Telecom PLC' do not entirely consist of public funds, and therefore when operating as a company 'Sri Lanka Telecom PLC' does not fall under governmental regulations which other public enterprises and institutions fall under. It was therefore submitted on behalf of the PA that the question arises as to whether 'funds' of such company amount to 'public funds' and by extension whether the information in question relates to the shareholders of the company. It was further submitted that, as the State is involved in this instance as a shareholder of the company, the State cannot be placed on a different plane than any other shareholders. Therefore, the PA contended that theoretically, the standards that were applied in the *Ceylon Bank Employees Union v People's Bank* (RTIC Appeals 58/2018 RTIC Minutes of 22.05.2018) must be differentiated from that which applies to an institution such as the 'Sri Lanka Telecom PLC' which functions through shareholder funds as opposed to 'public funds'.

The Commission while appreciating the contentions of the Appellant noted that when funds are all in one pool and is indistinguishable from the other, it is impossible to separate what constitutes public funds. The Commission also noted that with the increased privatisation of public functions, if the argument made by the PA is accepted this could result in a situation where private entities exercising public functions would be exempted in derogation of the principles of transparency and accountability required by virtue of those institutions in fact exercising public power. , The Commission noted that as such the RTI Act sought to strike a balance when defining a Public Authority in the Act. As such the Commission also drew the notice of the PA to the fact that Non-Governmental Organisations have also been included as a Public Authority under the RTI Act of Sri Lanka regardless of the source of funding, if they have an affiliation with a State.

The Commission further noted that the establishment of 'public interest' is required only once the Commission decides that the exemptions cited by the PA are in fact applicable information in issue and not in the first instance itself. The Commission focusing on the information requested, elaborated that the request made is in relation to legal costs incurred by the PA for the appeals of 295/2018, 298/2018,

299/2018, 319/2018, and 402/2018 in the RTI Commission. The legal cost in question is data that will be in the public domain in due course, therefore weakening the arguments alleged by the PA.

The PA was queried as to whose privacy will be affected under Section 5(1)(a). The PA answered that the information so published in the public domain would be the sum of all the legal costs of the PA for a fixed time period, and that provision of such information requested shall be in violation of the legal counsels' privacy. The Commission noted that the Appellant had not requested the names of the legal counsels, thereby not affecting the privacy of such individuals.

The Commission also queried the PA on how the PAs contention that information in relation to usage of public funds is to be distinguished where a large number of persons or a trade union is making the information request versus a citizen who is an individual. The PA submitted that it is not the fact of an individual making the information request that creates the dispute, but its reflection on the circumstances of the appeal at hand, and for the burden on the Appellant to prove that the characteristics of this appeal is higher to demonstrate that there exists an overriding public interest which require the provision of information which is more clearly evident in instances where a trade union or an organisation is the Appellant. The Commission noted that the burden of proof under the RTI Act is on the PA to establish that the exemptions apply to the satisfaction of the Commission. Upon establishment of such exemptions, the Commission will based on the facts laid before it determine whether there is an overriding public interest in the release of the information.

The PA submitted that it was not pursuing the exemption under Section 5 (1) (d) although cited in its written submissions.

The PA submitted that the reference to professional privilege laid down in Section 5(1)(f) where any communication between a professional and a PA to whom such professional provides services will be exempted, is applicable, and the said information therefore need not be in the public domain.

The PA also submitted that Section 5(1)(g) where the information requested is required to be kept confidential due to the existence of a fiduciary relationship was applicable in this instance and cited the Indian case of *Shri Aseem Takyar v. Delhi Metro Rail Corporation* [CIC/VS/A/2012/001426/04589] in support of this contention.

The Appellant submitted that he needed time to address the objections of the PA .

Order:

The Appellant is directed to submit written submissions addressing the new objections / grounds of exemptions submitted by the PA. Counsel for the PA is directed to obtain further instructions in relation to provision of the information as the information requested is such that must be available in the public domain.

The Appeal is hereby adjourned.

Next date of hearing: 07.01.2020

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

RTIC Appeal (In-Person Hearing)/1283/2019 - Minute adopted as part of the formal meeting of the Commission on 07.01.2020.

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Mr. S.G. Punchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: C J Wijayawardhana
Notice issued to: Designated Officer, Sri Lanka Telecom PLC

Appearance/ Represented by:

Appellant - C J Wijayawardhana
PA - Rajitha De Silva, Manager Legal Officer, Sri Lanka Telecom PLC
Rajeev Amarasuriya, Attorney-at-Law (for PA)
Anne Devananda, Attorney-at-Law (for PA)
Pujanee Galappaththi, Attorney-at-Law (for PA)
Chiranthi Rajapakse, Attorney-at-Law (for PA)

Matters Arising During the Course of the Hearing:

Upon query by the Commission, it was clear that the Appellant had not submitted his written submission addressing the contentions made by the PA.

Counsel for the PA upon question by the Commission, reiterated the basis on which they distinguished the current appeal with *Ceylon Bank Employees Union v People's Bank* (RTIC Appeals 58/2018 RTIC Minutes of 22.05.2018), the contention made under the premises of 'Public Funds'.

Counsel laid down that in the Sri Lanka Telecom PLC, there is no disclosure of legal fees under a separate category in the 'Annual Report' and 'Statement of Profit and Loss'. The only way in which such fees are

included in the Statement of Profit and Loss, under the heading of 'Administrative Cost' and under 'Other Operating Expenditure'. Counsel stated that the PA was of the opinion that there is no requirement for the institution to lay down the legal costs separately as it falls within 'Administrative Costs'. Upon further questions by the Commission, Counsel commented that the PA does not separately categorise 'Legal Costs' as neither Sri Lanka Accounting Standards nor proactive disclosure require such separate categorisation. Thus, the PA was of the view that these details are not in the public domain.

Order:

The Appellant is directed to submit written submissions addressing the objections / grounds of exemptions submitted by the PA within two weeks. The PA is hereby directed to respond to the written submission of the Appellant within two weeks from receiving the written submission.

The Appeal is hereby adjourned.

Next date of hearing: 19.05.2020

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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Mahinda Gammampila – Chairman

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Kishali Pinto – Jayawardena – Commission Member

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S.G. Punchihewa – Commission Member

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Selvy Thiruchandran – Commission Member

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R. Walgama – Commission Member